

Bolivia

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Times of transition

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After five years of social and political crisis, following the so-called war for water of 2000 (when after social protest a private concession for water distribution in the city of Cochabamba was expropriated), general elections held in December 2005 brought to power a nationalistic socialist movement headed by President Evo Morales, leader of the strong coca growers' unions and a native of the Aymara indigenous peoples. Inaugurated in January 2006, the administration announced its intentions to revert the neo-liberal model of economy. This model included the privatization of public companies and services, a policy implemented after 1985 when the administration, and ensuing administrations in the nineties, promoted the liberalization of the economy.

Energy sector reforms

After political and social protest in 2005, the Bolivian Congress passed a new Law of Hydrocarbons reverting prior legislation under which Bolivia developed its natural gas industry, particularly for exports, by attracting large foreign investments. Under the new law private companies were deprived of key contractual rights, mainly those giving them title to production and trading rights. The law also introduced substantial changes in the taxation structure, increasing the government stake.

At the time, foreign oil companies sent the government notices of controversies under applicable Bilateral Investment Treaties (BITs) which Bolivia had signed since the eighties (20 in total). They announced disagreement with the new legislation and probable claims under international arbitration at the International Centre for Settlement of Investment Disputes (Icsid). Bolivia had

adhered to the Icsid Washington Convention in 1994. Those notifications opened a difficult period of negotiations and failed attempts by various previous administrations aimed at introducing substitute contracts.

In May 2006 President Morales passed a decree of nationalization, granting oil companies an additional six months to sign new contracts. It also created an additional interim participation for the state of 32% on production. Forced by the new political scenario, companies signed new substitute contracts in October 2006, after some political controversy over their congressional approval. During 2007 the policy acquired new speed by the signing of an additional natural gas exports agreement with Argentina and new agreements in respect of exports to Brazil. Companies declared new contracts were satisfactory and so the nationalistic policy was considered a political success for the administration. Required future investments, however, remain uncertain. The state oil company, YPFB, is yet to play an important role, particularly in connection with new industrialization ventures.

Economic planning in other sectors

During 2006 the administration announced its economic plan for the years to come with a clear nationalistic tendency. It includes forms of reversion of privatized companies and, generally, a greater role and intervention of the state in all areas of economic activity and reorganization of land tenure and forestry. Recovery of state participation in the most important privatized state companies is one objective. This has already succeeded in the hydrocarbons sector when, as part of the new policy, the state oil company recovered title over shares of three capitalized (privatized) companies. Two private administrators of pension funds held and managed the companies through a fund created to benefit a large portion of the population. As a result of this recovery, the state will have to finance short-

falls for payment of the benefit, estimated at around \$50 million for 2007.

2007 witnessed negotiations to similarly revert title of the shares in the until then largest telecommunications operator, where Telecom from Italy had acquired a 50% stake and control of administration. Other capitalized companies to follow reversion were in the electricity and rail transportation sectors. The failed capitalized Bolivian airline was an exception to the policy.

Negotiations had also concluded in 2006 for another controversial reversion of a water concession for El Alto and La Paz. The 2000 war for water controversy, the first Bolivian case before Icsid, had reached an arbitration tribunal under the Bolivia-Netherlands BIT. The tribunal rejected all pre-judgment jurisdictional defences filed by the Bolivian state. The controversy was finally settled. A second Bolivian Icsid case involves a controversy under the BIT with Chile over the reversion of mining concessions of a Bolivian subsidiary of a Chilean company, also after social and political pressure in 2005.

A year of mining

If 2006 was the year of hydrocarbons for the Morales administration, 2007 has been the year of mining. Under its economic plan the intention is to recover the role of the state mining company in all areas of production. Conflicts have arisen between workers of the private sector and of the state company and smaller producers organized in cooperatives, settled in different forms with the state company acquiring a greater role with no small economic challenges.

In February 2007 the government decreed the reversion (an expropriation without compensation) of a tin smelter which had been privatized in 2002, belonging to a Bolivian subsidiary of Glencore from Switzerland. This triggered a complaint by the Swiss government, a controversy under the Swiss BIT and negotiations with the government (an Icsid

arbitration procedure can be opened after a year if negotiations fail). This is a case with high political implications because the smelter had belonged to former President Sanchez de Lozada, a key promoter of the liberalization policies of the nineties, overthrown from government in October 2003 after another political and social crisis (this time the gas war), and a trial against whom for state responsibility is in process before the Supreme Court of Justice.

In the meantime discussions on a new mining legislation continued, the basic intent being to increase taxation, foster policies of industrialization and give the state mining company the greater role announced by the economic plan. Private investment, whether national or foreign, is still to play an important role. The mining scenario has been obscured by a ruling of the Constitutional Court which in 2006 declared certain articles of the Mining Code contrary to the constitution, prospectively affecting property rights.

A constitutional challenge

The changing scenario includes the approval of a new political constitution. A Constitutional Assembly, in place since 2006, faces the complex challenge of approving it within a timeframe which has proven to be insufficient, given difficult controversies over a number of issues. These issues include the nature of the Bolivian state itself, autonomous entities, title over natural resources, indigenous peoples' rights and many others. The new constitution is expected to be enacted in 2008, triggering new general electoral processes.

While the mood for economic changes is very strong, mainly in the productive and public service structures and on land tenure, the new administration has been extremely careful in maintaining the fiscal, monetary, foreign exchange and financial/banking policies originated in the reforms of 1985, which has given Bolivia important stability in these areas over the years. Other than giving state entities a new role in the microfinance market, with the intent of reducing interest rates and fuelling funds for popular housing projects, stability in the rules of the financial sector remain. Strong activity is seen in microfinance, with numerous credit facilities from foreign financial entities. Bolivia has found additional external debt relief from the international community.

2006 – and 2007 is to follow, though less spectacularly – proved to be a year of positive economic results: record value of exports, highest historical foreign reserves, fiscal surplus for the first time in many years, reduction of external debt (though with increases in internal debt), positive trade balance, low

inflation, and revaluation of the Bolivian currency against the US dollar. The 2008 internal political scenario will still be a complex one. For foreign investment the country continues to be considered politically risky, despite opportunities opened by good performance, particularly externally, and favourable international market conditions.

Financial and corporate

Recommended firms

Tier 1

Bufete Aguirre
Guevara & Gutierrez

Tier 2

CR & F Rojas
Criales Urcullo & Antezana
Estudio Juridico Gerke
Indacochea & Asociados
Moreno Baldivieso
Quintanilla & Soria

Bolivia is a state in transition, with administration policies creating uncertainties within the business community. Well-intended populist reforms have led to state acquisitions of private assets in certain industries (mining and hydrocarbons, mostly), moves generally applauded by the population at large.

Foreign investors, however, are not fond of government interference in the marketplace, and many have put further investments on hold until the markets sort out the effects. The government is sending the wrong message, they say, instead of capitalizing on the opportunities presented. Bolivia is poised to provide its neighbours with needed electrical power; the capital needed to finance these projects is being held back until investors are sure they won't lose their investments.

Make no mistake – there is plenty of work for financial lawyers. Bolivian companies need help in making local deals, finding new investments, and even moving across borders into Brazil, Argentina and Chile. The state's tough acquisitions policies have ironically benefited Bolivia's law firms, for the moment. Negotiations are necessary to transition companies from the private sector to state-owned status. Companies are also anxious to protect existing investments, turning to external counsel for help in maintaining assets.

The mood is cautious, though, as law firms continue to adjust to the new realities. Firms that experienced growth over the past several years may need to cut back to pre-expansion size. Older firms that have gone through previous crises should know how to react, but it

will be interesting to see which of the younger firms survive.

Bufete Aguirre

One of Bolivia's traditional firms, Bufete Aguirre has an international client list that has helped keep this firm in the top ranks despite its relative small size. One client admitted going to Aguirre after asking around, and concluded: "Not that many firms in Bolivia are part of an international board; they are a well respected firm with the connections to get things moving."

Those international connections have served Aguirre well, in a rather moribund economy. In September 2006, the Japanese bank Sumitomo announced a \$224 million investment for a 35% stake in Apex Silver's San Cristobal silver-zinc-lead mining development project. The San Cristobal mines are one of the world's largest producers of silver and zinc, and a significant investment in Bolivia by a foreign company. Sumitomo was advised in the transaction by an Aguirre team led by partners Fernando Aguirre and Ignacio Aguirre.

The firm's international ties also came into play again at the end of the year when Germany's Bayer acquired rival Schering in a white-knight bid. The new company, Bayer Schering Pharma, needed to consolidate its operations worldwide, and in Bolivia it fell to Aguirre to help the company through this phase.

Fernando Aguirre in particular is singled out by his peers as one of the country's leading lawyers. One rival said: "Fernando Aguirre is a gentleman with a top-class legal mind. He always looks for the benefit to his clients, but also to those across the table."

As in previous years, Aguirre has kept its membership in several international legal associations, including Globalaw and the International Bar Association.

Leading lawyers

Fernando Aguirre
Ignacio Aguirre

Guevara & Gutierrez

Even in Bolivia's difficult market, Guevara & Gutierrez is considered a top-tier firm. When the country's top lawyers are named, Ramiro Guevara is one of those most mentioned. One competitor affirmed: "Ramiro is everything you'd want in a lawyer, and having him involved in a deal is good." Fellow partner Jorge Inchauste has also been singled out by his peers; one older rival said: "He's a young lawyer with a very good reputation."

Certainly, the firm's client list reflects its top reputation. The Bolivian operation of

Brazilian energy company Petrobras is included, as is Mexican cement company Cementos Chihuahua. The International Finance Corporation (part of the World Bank) turns to Guevara & Gutierrez for counsel, as does the Inter-American Development Bank.

Leading lawyers

Ramiro Guevara
Jorge Inchauste

Criales Urcullo & Antezana

In a difficult corporate environment, Criales Urcullo & Antezana has nevertheless made an effort to stand out from the crowd. A satisfied client of the firm said: "Bolivia has a very complicated legal system, and we use Criales Urcullo because their work is of the best quality."

With its strength in the hydrocarbons industry, Criales helped major clients Petrobras Bolivia, Total Bolivia, Repsol YPF and Pan American Energy to each renegotiate agreements with the Bolivian government. Name partners José Criales and María Antezana helped each client to structure agreements for a 40-year gas production term.

When Elfec, the Bolivian subsidiary of energy conglomerate PPL, needed to access capital for necessary project works, the second largest electric distributor in the country turned to Criales for assistance. A \$20 million bond placement was successfully issued, a very large amount in this market.

Criales has also been able to assist its clients looking for investments outside Bolivia. The electrical power company Ingelec sought to diversify operations into Chile, Brazil and Argentina, and Criales helped the company invest some \$5 million into those operations.

Leading lawyers

José Antonio Criales Estrugo

Indacochea & Asociados

The largest Bolivian firm headquartered in the eastern regional capital of Santa Cruz – and the only one able to compete with the big boys from La Paz – Indacochea & Asociados has been busy advising clients affected by the current administration's nationalization drive. The firm finds itself quite busy, despite the market perception that it has lost business as a result of current government policies.

The firm has indeed suffered slight setbacks due to the nationalization efforts, with its hydrocarbon clientele taking the brunt of the policy changes. Still, those changes have also made new opportunities available. Companies need to negotiate terms with the

government, and Indacochea has been representing its clients in such negotiations. The firm has also been overseeing procedures once negotiations are completed. For example, a \$120 million bond placement for hydrocarbon pipeline operator Transrede closed in May 2006, with the company using the proceeds as capital.

Indacochea has begun to diversify beyond its traditional strengths in the hydrocarbons sector. One important new client is the multinational paper company Kimberly-Clark. The firm has also been advising investors – institutional and high-net-worth individuals alike – in purchasing land tracts to raise cattle and for farming. Soy and soy oil have become increasingly important, and the firm now lists leading Bolivian cooking oil producer Fino as a client.

Ricardo Indacochea is singled out by several of his peers at rival firms, and is very well respected in the oil-and-gas sector.

Leading lawyers

Ricardo Indacochea
Mariana Pereira

Moreno Baldivieso

Moreno Baldivieso is considered by many Bolivian lawyers to be a strong intellectual property house, but the firm has been active in the financial legal markets as well, a strength which is often overlooked.

Recently, Moreno Baldivieso has taken steps to combat this perception. It added insurers Bisa Seguros (part of the Bisa financial group) to its client list, advising it in the purchase of \$43 million of shares in Bolivia's leading life insurance company, La Vitalicia.

Moreno Baldivieso was also counsel to Pan American Silver in the Canadian mining company's \$54 million investment in Centro Minero San Vicente. The deal is part of a multi-year project exploiting Bolivia's largest silver reservoirs. Within the next decade, the project is expected to be worth more than \$100 million.

The 33-attorney firm is led by Ramiro Moreno Baldivieso, while partner Miguel Angel Jemio Mendoza has also been cited for his work. The future lies, however, with the firm's younger partners. Andrés Moreno in particular has been identified by several rivals as one of Bolivia's rising stars, and is expected by some to eventually run the firm.

Leading lawyers

Ramiro Moreno Baldivieso
Miguel Angel Jemio Mendoza
Andrés Moreno Gutiérrez